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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

VOLTAGE PICTURES, LLC, and  
MAXCON PRODUCTIONS, INC.,

Plaintiffs,

v.

DOE, a/k/a IP 76.115.46.230

Defendant.

Case No.: 3:13-cv-00836-AA

MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION TO STRIKE  
PLEADINGS OF ATTORNEY ROBERT  
SWIDER ON BEHALF OF DEFENDANT

It is axiomatic that an attorney needs a client to appear. In the present case it has been revealed that filings in this case on behalf of "Doe Defendant" are in fact by a counsel that represents only third party subscriber Kevin Balmer. Decl. Counsel ¶ 5, 6, ("... I represent Kevin Balmer. At the present time we have not been engaged by anyone else in connection with these claims."

As per the initial Complaint, the defendant is an infringer that personally infringed plaintiffs' copyrights. The subscriber is identified as a distinct party that may or may not also be the defendant. ¶¶ 14, 46. It has been maintained that Kevin Balmer *could not possibly* be the

defendant. Decl. Counsel ¶¶ 6, 7. In plaintiffs' First Amended Complaint (Doc. 14) this distinction is elaborated on and further clarified.

18. In response to a subpoena, Comcast has identified the party assigned IP address 76.115.46.230 as a Kevin Balmer, of Portland, Oregon.

19. Kevin Balmer denies infringing, and through counsel claims to have been out of the country and to have had, at least at the time of infringement, at least one roommate, presumably who had access to the infringing IP address.

20. To date Kevin Balmer has refused to identify any roommate.

First Amended Complaint, Doc. 14, ¶¶ 18-20.

This distinction is not lost on appearing counsel, as counsel's declaration with this court states: "My firm represents Doe #270 a/k/a IP 76.115.46.230. The subscriber of that IP address was identified by Comcast to counsel for Plaintiff as Kevin Balmer pursuant to a subpoena issued by Plaintiff ...." Doc. 13-2. The "Doe" and the "subscriber" are clearly presented as distinct parties and not as one and the same.

Further, the Reply brief filed (Doc. 16) maintaining the claim the defendant is represented by counsel was filed after conferral on this issue and after plaintiff's First Amended Complaint.

It is acknowledged that Kevin Balmer, the subscriber identified as providing the Doe Defendant access to the internet, may have standing to appear with a proper showing. But this is not the case being presented or argued in the filings of record.

As such the filings of record are properly struck pursuant to FRCP 12(f) and FRCP 11.

In the alternative, should counsel actually now represent the defendant, the identity of the defendant should be revealed. Plaintiff has no objection to the identity of the defendant being submitted under seal and maintained as confidential.

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DATED: November 7, 2013.

/s/ Carl D. Crowell

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